

vanpool program, transit benefit program, parking cashout program, shuttle program, or telework program), representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with a reasonable opportunity to comment on the transportation plan using the participation plan developed under § 450.316(a).

(l) The MPO(s) shall publish or otherwise make readily available the metropolitan transportation plan for public review, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web.

(m) A State or MPO is not required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (f)(11) of this section.

(n) In nonattainment and maintenance areas for transportation-related pollutants, the MPO(s), as well as the FHWA and the FTA, must make a conformity determination on any updated or amended transportation plan in accordance with the Clean Air Act and the EPA transportation conformity regulations (40 CFR part 93, subpart A). A 12-month conformity lapse grace period will be implemented when an area misses an applicable deadline, in accordance with the Clean Air Act and the transportation conformity regulations (40 CFR part 93, subpart A). At the end of this 12-month grace period, the existing conformity determination will lapse. During a conformity lapse, MPOs can prepare an interim metropolitan transportation plan as a basis for advancing projects that are eligible to proceed under a conformity lapse. An interim metropolitan transportation plan consisting of eligible projects from, or consistent with, the most recent conforming transportation plan and TIP may proceed immediately without revisiting the requirements of this section, subject to interagency consultation defined in 40 CFR part 93, subpart A. An interim metropolitan transportation plan containing eligible projects that are not from, or consistent with, the most recent conforming transportation plan and TIP

must meet all the requirements of this section.

[81 FR 34135, May 27, 2016, as amended at 81 FR 93473, Dec. 20, 2016]

§ 450.326 Development and content of the transportation improvement program (TIP).

(a) The MPO, in cooperation with the State(s) and any affected public transportation operator(s), shall develop a TIP for the MPA. If more than one MPO has been designated to serve an MPA, those MPOs within the MPA shall jointly develop a single TIP for the MPA. The TIP shall reflect the investment priorities established in the current metropolitan transportation plan and shall cover a period of no less than 4 years, be updated at least every 4 years, and be approved by the MPO(s) and the Governor(s). However, if the TIP covers more than 4 years, the FHWA and the FTA will consider the projects in the additional years as informational. The MPO(s) may update the TIP more frequently, but the cycle for updating the TIP must be compatible with the STIP development and approval process. The TIP expires when the FHWA/FTA approval of the STIP expires. Copies of any updated or revised TIPs must be provided to the FHWA and the FTA. In nonattainment and maintenance areas subject to transportation conformity requirements, the FHWA and the FTA, as well as the MPO(s), must make a conformity determination on any updated or amended TIP, in accordance with the Clean Air Act requirements and the EPA's transportation conformity regulations (40 CFR part 93, subpart A).

(b) The MPO(s) shall provide all interested parties with a reasonable opportunity to comment on the proposed TIP as required by § 450.316(a). In addition, in nonattainment area TMAs, the MPO(s) shall provide at least one formal public meeting during the TIP development process, which should be addressed through the participation plan described in § 450.316(a). In addition, the MPO(s) shall publish or otherwise make readily available the TIP for public review, including (to the maximum extent practicable) in electronically accessible formats and means,

such as the World Wide Web, as described in § 450.316(a).

(c) The TIP shall be designed such that once implemented, it makes progress toward achieving the performance targets established under § 450.306(d).

(d) The TIP shall include, to the maximum extent practicable, a description of the anticipated effect of the TIP toward achieving the performance targets identified in the metropolitan transportation plan, linking investment priorities to those performance targets.

(e) The TIP shall include capital and non-capital surface transportation projects (or phases of projects) within the boundaries of the metropolitan planning area proposed for funding under 23 U.S.C. and 49 U.S.C. Chapter 53 (including transportation alternatives; associated transit improvements; Tribal Transportation Program, Federal Lands Transportation Program, and Federal Lands Access Program projects; HSIP projects; trails projects; accessible pedestrian walkways; and bicycle facilities), except the following that may be included:

- (1) Safety projects funded under 23 U.S.C. 402 and 49 U.S.C. 31102;
- (2) Metropolitan planning projects funded under 23 U.S.C. 104(d), and 49 U.S.C. 5305(d);
- (3) State planning and research projects funded under 23 U.S.C. 505 and 49 U.S.C. 5305(e);
- (4) At the discretion of the State and MPO, metropolitan planning projects funded with Surface Transportation Program funds;
- (5) Emergency relief projects (except those involving substantial functional, locational, or capacity changes);
- (6) National planning and research projects funded under 49 U.S.C. 5314; and
- (7) Project management oversight projects funded under 49 U.S.C. 5327.

(f) The TIP shall contain all regionally significant projects requiring an action by the FHWA or the FTA whether or not the projects are to be funded under title 23 U.S.C. Chapters 1 and 2 or title 49 U.S.C. Chapter 53 (e.g., addition of an interchange to the Interstate System with State, local, and/or private funds and congressionally des-

ignated projects not funded under 23 U.S.C. or 49 U.S.C. Chapter 53). For public information and conformity purposes, the TIP shall include all regionally significant projects proposed to be funded with Federal funds other than those administered by the FHWA or the FTA, as well as all regionally significant projects to be funded with non-Federal funds.

(g) The TIP shall include, for each project or phase (e.g., preliminary engineering, environment/NEPA, right-of-way, design, or construction), the following:

- (1) Sufficient descriptive material (*i.e.*, type of work, termini, and length) to identify the project or phase;
- (2) Estimated total project cost, which may extend beyond the 4 years of the TIP;
- (3) The amount of Federal funds proposed to be obligated during each program year for the project or phase (for the first year, this includes the proposed category of Federal funds and source(s) of non-Federal funds. For the second, third, and fourth years, this includes the likely category or possible categories of Federal funds and sources of non-Federal funds);
- (4) Identification of the agencies responsible for carrying out the project or phase;
- (5) In nonattainment and maintenance areas, identification of those projects that are identified as TCMs in the applicable SIP;
- (6) In nonattainment and maintenance areas, included projects shall be specified in sufficient detail (design concept and scope) for air quality analysis in accordance with the EPA transportation conformity regulations (40 CFR part 93, subpart A); and
- (7) In areas with Americans with Disabilities Act required paratransit and key station plans, identification of those projects that will implement these plans.

(h) Projects that are not considered to be of appropriate scale for individual identification in a given program year may be grouped by function, work type, and/or geographic area using the applicable classifications under 23 CFR 771.117(c) and (d) and/or 40 CFR part 93. In nonattainment and maintenance areas, project classifications must be

consistent with the “exempt project” classifications contained in the EPA transportation conformity regulations (40 CFR part 93, subpart A). In addition, projects proposed for funding under title 23 U.S.C. Chapter 2 that are not regionally significant may be grouped in one line item or identified individually in the TIP.

(i) Each project or project phase included in the TIP shall be consistent with the approved metropolitan transportation plan.

(j) The TIP shall include a financial plan that demonstrates how the approved TIP can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the TIP, and recommends any additional financing strategies for needed projects and programs. In developing the TIP, the MPO(s), State(s), and public transportation operator(s) shall cooperatively develop estimates of funds that are reasonably expected to be available to support TIP implementation in accordance with § 450.314(a). Only projects for which construction or operating funds can reasonably be expected to be available may be included. In the case of new funding sources, strategies for ensuring their availability shall be identified. In developing the financial plan, the MPO(s) shall take into account all projects and strategies funded under title 23 U.S.C., title 49 U.S.C. Chapter 53, and other Federal funds; and regionally significant projects that are not federally funded. For purposes of transportation operations and maintenance, the financial plan shall contain system-level estimates of costs and revenue sources that are reasonably expected to be available to adequately operate and maintain Federal-aid highways (as defined by 23 U.S.C. 101(a)(6)) and public transportation (as defined by title 49 U.S.C. Chapter 53). In addition, for illustrative purposes, the financial plan may include additional projects that would be included in the TIP if reasonable additional resources beyond those identified in the financial plan were to become available. Revenue and cost estimates for the TIP must use an inflation rate(s) to reflect “year of expenditure dollars,” based on reasonable financial principles and in-

formation, developed cooperatively by the MPO(s), State(s), and public transportation operator(s).

(k) The TIP shall include a project, or a phase of a project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project. In nonattainment and maintenance areas, projects included in the first 2 years of the TIP shall be limited to those for which funds are available or committed. For the TIP, financial constraint shall be demonstrated and maintained by year and shall include sufficient financial information to demonstrate which projects are to be implemented using current and/or reasonably available revenues, while federally supported facilities are being adequately operated and maintained. In the case of proposed funding sources, strategies for ensuring their availability shall be identified in the financial plan consistent with paragraph (h) of this section. In nonattainment and maintenance areas, the TIP shall give priority to eligible TCMs identified in the approved SIP in accordance with the EPA transportation conformity regulations (40 CFR part 93, subpart A) and shall provide for their timely implementation.

(l) In cases that the FHWA and the FTA find a TIP to be fiscally constrained and a revenue source is subsequently removed or substantially reduced (*i.e.*, by legislative or administrative actions), the FHWA and the FTA will not withdraw the original determination of fiscal constraint. However, in such cases, the FHWA and the FTA will not act on an updated or amended TIP that does not reflect the changed revenue situation.

(m) Procedures or agreements that distribute suballocated Surface Transportation Program funds to individual jurisdictions or modes within the MPA by pre-determined percentages or formulas are inconsistent with the legislative provisions that require the MPO, in cooperation with the State and the public transportation operator, to develop a prioritized and financially constrained TIP and shall not be used unless they can be clearly shown to be based on considerations required to be

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addressed as part of the metropolitan transportation planning process.

(n) As a management tool for monitoring progress in implementing the transportation plan, the TIP should:

(1) Identify the criteria and process for prioritizing implementation of transportation plan elements (including multimodal trade-offs) for inclusion in the TIP and any changes in priorities from previous TIPs;

(2) List major projects from the previous TIP that were implemented and identify any significant delays in the planned implementation of major projects; and

(3) In nonattainment and maintenance areas, describe the progress in implementing any required TCMs, in accordance with 40 CFR part 93.

(o) In metropolitan nonattainment and maintenance areas, a 12-month conformity lapse grace period will be implemented when an area misses an applicable deadline, according to the Clean Air Act and the transportation conformity regulations (40 CFR part 93, subpart A). At the end of this 12-month grace period, the existing conformity determination will lapse. During a conformity lapse, MPOs may prepare an interim TIP as a basis for advancing projects that are eligible to proceed under a conformity lapse. An interim TIP consisting of eligible projects from, or consistent with, the most recent conforming metropolitan transportation plan and TIP may proceed immediately without revisiting the requirements of this section, subject to interagency consultation defined in 40 CFR part 93. An interim TIP containing eligible projects that are not from, or consistent with, the most recent conforming transportation plan and TIP must meet all the requirements of this section.

(p) Projects in any of the first 4 years of the TIP may be advanced in place of another project in the first 4 years of the TIP, subject to the project selection requirements of § 450.332. In addition, the MPO(s) may revise the TIP at any time under procedures agreed to by the State, MPO(s), and public transportation operator(s) consistent with the TIP development procedures established in this section, as well as the procedures for the MPO(s) participa-

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tion plan (see § 450.316(a)) and FHWA/FTA actions on the TIP (see § 450.330).

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§ 450.328 TIP revisions and relationship to the STIP.

(a) An MPO(s) may revise the TIP at any time under procedures agreed to by the cooperating parties consistent with the procedures established in this part for its development and approval. In nonattainment or maintenance areas for transportation-related pollutants, if a TIP amendment involves non-exempt projects (per 40 CFR part 93), or is replaced with an updated TIP, the MPO(s) and the FHWA and the FTA must make a new conformity determination. In all areas, changes that affect fiscal constraint must take place by amendment of the TIP. The MPO(s) shall use public participation procedures consistent with § 450.316(a) in revising the TIP, except that these procedures are not required for administrative modifications.

(b) After approval by the MPO(s) and the Governor, the State shall include the TIP without change, directly or by reference, in the STIP required under 23 U.S.C. 135. In nonattainment and maintenance areas, the FHWA and the FTA must make a conformity finding on the TIP before it is included in the STIP. A copy of the approved TIP shall be provided to the FHWA and the FTA.

(c) The State shall notify the MPO(s) and Federal land management agencies when it has included a TIP including projects under the jurisdiction of these agencies in the STIP.

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§ 450.330 TIP action by the FHWA and the FTA.

(a) The FHWA and the FTA shall jointly find that each metropolitan TIP is consistent with the metropolitan transportation plan produced by the continuing and comprehensive transportation process carried on cooperatively by the MPO(s), the State(s), and the public transportation operator(s) in accordance with 23 U.S.C. 134 and 49 U.S.C. 5303. This finding shall be based on the self-certification statement submitted by the State and